IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 224 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTABA W/OF GIRUBHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 224 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 30/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that seven F.I.Rs. were registered against him before different Police Stations in Rajkot City between 19/06/03 and 14/11/03 for offences punishable u/s.66 & 65 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that the petitioner was a head strong person and people were afraid of him.

3. On the strength of the aforesaid registered offences and unregistered cases, the detaining authority found the petitioner to be a "bootlegger" and with a view to prevent him from carrying on his bootlegging activities, he was ordered to be detained by impugned order of detention.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that the petitioner's activities could not be treated to be the activities leading to a threat to public order and therefore, the petitioner could not be detained. That the representation submitted by the petitioner was not disposed of within a reasonable time, and therefore, the petitioner's right to get decision on his representation has been frustrated or denied. Therefore, the further continuance of the detention of the petitioner is illegal and therefore, the order of detention is required to be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. During the course of hearing, the learned advocate for the petitioner has submitted a communication received from the Police Inspector, PCB, Rajkot City along with accompaniments. They are taken on record. The learned advocate for the petitioner has contended that simply because a few offences have been registered

against the petitioner, it could not be said that the petitioner's activity lead to a threat to public order. It is well settled that simply because a few prohibition offences have been registered against an individual, it would be difficult to say that those activities would amount to a threat to public order. In this connection, the learned advocate for the petitioner has relied upon a decision in the case of Piyush Kantilal Mehta V/s. Commissioner of Police, Ahmedabad City reported in A.I.R. 1989 SC 491. It has been observed therein that simply because a few prohibition offences have been registered against an individual, it may not be possible for the Court to hold the petitioner a "bootlegger" whose activities would amount to a threat to public order.

7. On following the said principle, it has to be accepted that simply because a few prohibition offences have been registered against the petitioner, it cannot be held that the petitioner's activities were likely to stage a threat to public order. Therefore, the order of detention cannot be sustained on this ground.

8. The detaining authority has also considered statements of two witnesses whose names have not been disclosed to the petitioner. The learned advocate for the petitioner has argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government.

9. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear, and therefore, their names were required to be kept away from the notice and knowledge of the petitioner.

10. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice and knowledge of the

petitioner. Therefore, the petitioner was deprived of submission of an effective representation against his detention. When the said constitutional right is shown to have been negatived or denied, then in that case, the further continuance of the detention of the petitioner cannot be sustained in the eye of law. Therefore, the petitioner is required to be released from detention. This can be done by passing an order for quashing and setting aside the impugned order of detention.

11. For the foregoing reason, this petition is allowed. The impugned order of detention dated 30/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Shantaba W/o Girubha Gohil, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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